

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

2:12-CR-168 JCM (PAL)

Plaintiff(s),

v.

PEDRO ALVAREZ-SANCHEZ,

Defendant(s).

**ORDER**

Presently before the court is petitioner Pedro Alvarez-Shanchez's motion to vacate pursuant to 28 U.S.C. section 2255. (Doc. # 50). In response, the government filed a motion to dismiss the section 2255 motion. (Doc. # 54).

On April 17, 2013, following a guilty plea, the court sentenced petitioner to fifty-six months in custody on one count of illegal reentry by a deported alien in violation of 8 U.S.C. section 1326. (Docs. ## 41 & 42). Petitioner timely filed an appeal to the Ninth Circuit on April 25, 2013. On December 30, 2013, the Ninth Circuit affirmed petitioner's sentence in a memorandum disposition. (Doc. # 53).

All but one of the arguments raised in petitioner's motion are identical to those raised in his direct appeal, and are therefore not reviewable by this court. *See United States v. Hayes*, 231 F.3d 1132, 1139 (9th Cir. 2000) ("When a defendant has raised a claim and has been given a full and fair opportunity to litigate it on direct appeal, that claim may not be used as basis for a subsequent § 2255 petition.").

1 In addition to reiterating the arguments made in his direct appeal, petitioner asserts that the  
2 court should have applied a downward departure due to petitioner's status as an illegal alien.  
3 Petitioner observes that United States citizens are often allowed to serve part of a custodial term in  
4 a residential reentry center. He argues that because his status as an illegal alien renders him ineligible  
5 for a residential reentry center, the Equal Protection Clause requires that his sentence be reduced.  
6 However, the Ninth Circuit has expressly held that illegal aliens convicted of violating 8 U.S.C.  
7 1326(a), such as petitioner, may not receive a downward departure on the basis of their illegal status.  
8 *See United States v. Martinez-Ramos*, 184 F.3d 1055, 1058 (9th Cir. 1999). Therefore, petitioner's  
9 motion to vacate will be denied.

10 Accordingly,

11 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the petitioner's motion to  
12 vacate pursuant to 28 U.S.C. section 2255 (doc. # 50) be, and the same hereby is, DENIED.

13 IT IS FURTHER ORDERED that the government's motion to dismiss (doc. # 54) is  
14 GRANTED.

15 IT IS FURTHER ORDERED that the government's motion to stay (doc. # 52) is DENIED  
16 as moot.

17 IT IS FURTHER ORDERED that petitioner's motion for a time reduction pursuant to 28  
18 U.S.C. section 2255 (doc. # 58) is DENIED.

19 DATED May 13, 2014.

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22 **UNITED STATES DISTRICT JUDGE**  
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